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OFFICE OF PETITIONS

In re Application of
Chappuis, James L.
Application No. 10/725,683
Filed: December 2, 2003
Attorney Docket No. 050313-1130

:

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed September 5, 2008, which will be treated as a petition to withdraw of the holding of abandonment in the above-identified application.

The petition to withdraw the holding of abandonment is **GRANTED**.

The above-identified application was held abandoned for failure to timely reply to the Office action mailed December 6, 2007, which set a shortened statutory period for reply of one (1) month. A reply was due on or before January 6, 2008. A Notice of Abandonment was mailed on September 2, 2008.

Petitioner asserts that the Office action mailed December 6, 2007 was never received.

A review of the written record indicates no irregularity in the mailing of the Office action, and, in the absence of any irregularity, there is a strong presumption that the Office action was properly mailed to the practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. In this regard, the showing required to establish the failure to receive the Office action must consist of the following:

1. a statement from practitioner stating that the Office action was not received by the practitioner;
2. a statement from the practitioner attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and
3. a copy of the docket record where the non-received Office action would have been entered had it been received must be attached to and referenced in the practitioner's statement.

See MPEP § 711.03(c) under subheading "Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action," and "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 Official Gazette 53 (November 16, 1993).

The petition satisfies the above-stated requirements. Accordingly, the application was not abandoned in fact.

In view of the above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition to revive under 37 CFR 1.137(b) is hereby dismissed as moot.

As petition to withdraw the holding of abandonment under the provisions of 37 CFR 1.181 does not require a fee, the \$770.00 petition fee submitted will be credited to petitioner's deposit account as requested.

This application is being referred to the Technology Center technical support staff of Art Unit 3733 for re-mailing the Office action of December 6, 2007. The period for reply will run from the mailing date of the Office action.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3206.



Liana Walsh
Petitions Examiner
Office of Petitions